

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Kurt Nauck,

Plaintiff,

v.

Audit Systems, Inc.,

Defendant.

:
:
Civil Action No.: 4:13-cv-03645
:
:
:

**COMPLAINT
JURY**

For this Complaint, Plaintiff, Kurt Nauck, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (the "FDCPA"), in its illegal efforts to collect a consumer debt.

2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendant transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

4. Plaintiff, Kurt Nauck ("Plaintiff"), is an adult individual residing in Tomball, Texas, and is a "consumer" as the term is defined by 15 U.S.C. § 1692a(3).

5. Defendant, Audit Systems, Inc. ("ASI"), is a Florida business entity with an address of 3696 Ulmerton Road, Clearwater, Florida 33703, operating as a collection agency, and is a "debt collector" as the term is defined by 15 U.S.C. § 1692a(6).

ALLEGATIONS APPLICABLE TO ALL COUNTS

A. The Debt

6. Plaintiff allegedly incurred a financial obligation (the “Debt”) to an original creditor (the “Creditor”).

7. The Debt arose from services provided by the Creditor which were primarily for family, personal or household purposes, which meets the definition of a “debt” under 15 U.S.C. § 1692a(5).

8. The Debt was purchased, assigned or transferred to ASI for collection, or ASI was employed by the Creditor to collect the Debt.

9. Defendant attempted to collect the Debt and, as such, engaged in “communications” as defined in 15 U.S.C. § 1692a(2).

B. ASI Engages in Harassment and Abusive Tactics

10. Within the last year, ASI placed calls to Plaintiff’s place of employment in an attempt to collect the Debt.

11. Plaintiff informed ASI that the calls were disrupting him at work and requested that ASI cease all calls to his work phone number.

12. Nonetheless, ASI placed at least three (3) additional calls to Plaintiff’s place of employment.

C. Plaintiff Suffered Actual Damages

13. Plaintiff has suffered and continues to suffer actual damages as a result of Defendant’s unlawful conduct.

14. As a direct consequence of Defendant’s acts, practices and conduct, Plaintiff suffered and continues to suffer from humiliation, anger, anxiety, emotional distress, fear, frustration and embarrassment.

COUNT I
VIOLATIONS OF THE FDCPA 15 U.S.C. § 1692, et seq.

15. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

16. Defendant's conduct violated 15 U.S.C. § 1692c(a)(1) in that Defendant contacted Plaintiff at a place and during a time known to be inconvenient for Plaintiff.

17. Defendant's conduct violated 15 U.S.C. § 1692d in that Defendant engaged in behavior the natural consequence of which was to harass, oppress, or abuse Plaintiff in connection with collection of the Debt.

18. Defendant's conduct violated 15 U.S.C. § 1692d(5) in that Defendant caused a phone to ring repeatedly and engaged Plaintiff in telephone conversations with the intent to annoy and harass Plaintiff.

19. Defendant's conduct violated 15 U.S.C. § 1692f in that Defendant used unfair and unconscionable means to collect the Debt.

20. The foregoing acts and omissions of Defendant constitute numerous and multiple violations of the FDCPA.

21. Plaintiff is entitled to damages as a result of Defendant's violations.

COUNT II
VIOLATIONS OF THE TEXAS DEBT COLLECTION ACT
TEX. FIN. CODE ANN. § 392, et al.

22. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

23. Plaintiff is a "consumer" as defined by Tex. Fin. Code Ann. § 392.001(1).

24. Defendant is a "debt collector" and a "third party debt collector" as defined by Tex. Fin. Code Ann. § 392.001(6) and (7).

25. Defendant caused a telephone to ring repeatedly, with the intent to annoy or abuse Plaintiff, in violation of Tex. Fin. Code Ann. § 392.302(4).

26. Plaintiff is entitled to injunctive relief and actual damages pursuant to Tex. Fin. Code Ann. § 392.403(a)(1) and (2) and to remedies under Tex. Bus. & Comm. Code § 17.62 pursuant to Tex. Fin. Code Ann. § 392.404(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant:

1. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
2. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
3. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3);
4. Injunctive relief pursuant to Tex. Fin. Code Ann. § 392.403(a)(1);
5. Actual damages pursuant to Tex. Fin. Code Ann. § 392.403(a)(2);
6. Remedies under Tex. Bus. & Comm. Code § 17.62 pursuant to Tex. Fin. Code Ann. § 392.404(a);
7. Punitive damages; and
8. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: December 13, 2013

Respectfully submitted,

By: /s/ Jody B. Burton

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